

AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1793

**Introduced by Assembly Member ~~Wayne~~ Members Wayne,
Cardoza, and Longville**
(Coauthors: Senators Dunn and Figueroa)

January 27, 2000

An act to add Section 17538.48 to the Business and Professions Code, relating to consumers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1793, as amended, Wayne. Consumers: Internet Privacy Protection Act of 2000.

Existing law regulates various consumer marketing practices, as specified, and imposes specified consumer notice and consent requirements on the disclosure of personal information concerning individual customers by various businesses and entities. Under existing law, a violation of these provisions is punishable as a crime.

This bill would enact the Internet Privacy Protection Act of 2000, which would provide that no Internet service provider that provides direct Internet access services to residents of California shall disclose any personally identifying information about a California subscriber to *any of its affiliates, as defined, or to* a 3rd party or parties for marketing or other purposes without the knowledge and affirmative consent of that subscriber. The bill would provide that this restriction shall be deemed to be incorporated into any

service agreement or contract between an Internet service provider and a California subscriber that is executed or renewed on or after the effective date of this bill. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be
2 cited, as the Internet Privacy Protection Act of 2000.

3 SEC. 2. The Legislature finds and declares that the
4 privacy of internet users is increasingly at risk due to the
5 widespread collection and distribution of personally
6 identifying information for marketing and other
7 purposes, and that this practice infringes on the
8 fundamental right to privacy guaranteed to all citizens of
9 California by the California Constitution.

10 SEC. 3. Section 17538.48 is added to the Business and
11 Professions Code, to read:

12 17538.48. (a) For purposes of this section:

13 (1) "Internet service provider" means any business or
14 organization qualified to do business in California that
15 provides direct internet access services to residents of
16 California.

17 (2) "Personally identifying information" includes a
18 subscriber's electronic mail address, social security
19 number, date of birth, income, occupation, credit card or
20 debit card information, current and prior addresses,
21 telephone number, or mother's maiden name.
22 "Personally identifying information" also includes any
23 information gathered by means of tracking an individual

1 subscriber's internet usage, IP connection history,
2 preferences, equipment, software, or user profile.
3 "Personally identifying information" does not include
4 aggregate data that cannot be used to identify an
5 individual subscriber, or information disclosed by the
6 internet service provider to *any of its affiliates or to* a third
7 party in connection with the processing, billing,
8 collection, or maintenance of an individual subscriber's
9 account.

10 (3) "*Affiliate*" means any company that controls the
11 Internet service provider, is controlled by the Internet
12 service provider, or is under common control with the
13 Internet service provider by another company.

14 (4) "Affirmative consent" means a statement by the
15 subscriber authorizing the internet service provider to
16 gather personally identifying information about the
17 subscriber and distribute it to *an affiliate of the Internet*
18 *service provider or to* a third party or parties for
19 marketing or other purposes. A subscriber's consent shall
20 be in writing and secured on a form that is separate and
21 distinct from the internet service provider's generally
22 applicable service agreement or contract. A subscriber's
23 consent may be provided to the internet service provider
24 by electronic mail or other electronic means. The
25 affirmative consent shall identify each *affiliate of the*
26 *Internet service provider and each* third party to whom
27 the internet service provider will disclose the subscriber's
28 personally—~~identifiable~~ identifying information and each
29 *affiliate of the Internet service provider and each* third
30 party who will have access to that information.

31 ~~(4)~~

32 (5) "Direct internet access services" includes the
33 provision of dial-up modem connections via telephone,
34 ISDN, DSL, or coaxial cable, or any other means of
35 providing direct TCP/IP services which include, at a
36 minimum, access to a domain name server and an
37 electronic mail server.

38 (b) (1) No internet service provider that provides
39 direct internet access services to residents of California
40 shall disclose any personally identifying information

1 about a California subscriber to ~~a~~ *any of its affiliates or to*
2 *a* third party or parties for marketing or other purposes
3 without the knowledge and affirmative consent of that
4 subscriber.

5 (2) The internet service provider shall obtain a
6 separate affirmative consent from a subscriber prior to
7 each disclosure of personally ~~—identifiable~~ *identifying*
8 information about that subscriber to *any of its affiliates or*
9 *to* a third party or parties for marketing or other purposes.
10 The internet service provider shall not disclose personally
11 ~~identifiable~~ *identifying* information about a subscriber to
12 *any of its affiliates or to any* third party or parties who is
13 not named on the affirmative consent of that subscriber.

14 (3) The internet service provider shall confirm its
15 receipt of the subscriber's affirmative consent prior to
16 disclosing to *any of its affiliates or to* a third party or
17 parties any personally ~~identifiable~~ *identifying*
18 information about that subscriber.

19 (c) The provisions of this section shall be deemed to be
20 incorporated into any service agreement or contract
21 between an internet service provider and a California
22 subscriber that is executed or renewed on or after the
23 effective date of this section.

24 SEC. 4. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

